Supreme Court, U.S.
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NO. 86-403

IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD EARL CRIBBS, SR. and SUE S. CRIBBS,

Petitioners,

versus

STEWART ARNOLD HILL and ANN ELIZABETH HILL,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Petitioners seek review of the judgments of the State Courts of Alabama. The Court of first instance here sought to be reviewed is the Circuit Court of the Tenth Judicial Circuit of Alabama, Bessemer Division. The Appellate Court here sought to be reviewed is the Supreme Court of Alabama.

Respondents oppose the Petition for Writ of Certiorari on two grounds:

1. *No Federal Question is Here Properly Presented*

No federal question was raised in the Alabama Court of first instance. As the Court of first instance noted in its Order (Pet. A-1)

> ". . . but the **plaintiffs**, though being notified through their attorney of record, the Honorable Jesse W. Shotts, **failed to appear.**"
> (emphasis ours)

On their Application for Rehearing before the Supreme Court of Alabama, Petitioners attempted to raise for the first time the Fifth and Fourteenth Amendments of the United States Constitution. The Supreme Court of Alabama was without the benefit of any record of the evidence that was before the trial Court. Petitioners made no effort to supply the Supreme Court of Alabama with a statement of the evidence as authorized by Rule 10(d) of the Alabama Rules of Appellate Procedure. Hence, no federal question has ever been properly raised or presented in either the Court of first impression or the Appellate Court of Alabama.

2. *There Has Been No Unconstitutional Application of the Procedural Statute (Sections 35-6-100 through 35-6-104, Code of Alabama, 1975)*

As to whether or not the Court of first instance was bound to accept the valuation of the Court appointed ap-

praiser, the Supreme Court of Alabama has answered in the negative as follows:

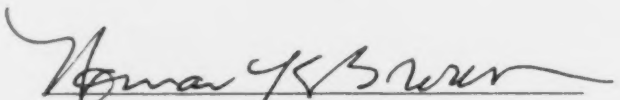
> Nothing contained in those statues prevents objection to the competence of the appraisers **or to the amount set by them as the values** of the interests to be purchased, as explained in **Madison,** supra. Should any such issues arise, the Court is not without authority to resolve them according to its traditional practice. (Emphasis Ours) **Gibbons v. Allen,** 402 So. 2d 914 (916)

Clearly then the Court was free to consider the Court appointed appraiser's report as well as other appraisals and evidence submitted by the Hills upon the hearing of their Application to Purchase. Such application of the Statute did not deny Petitioners due process or equal protection as guaranteed by both Federal and State Constitutions.

Petitioners have been afforded the constitutional guaranties of due process and equal protection of the law by the courts of Alabama, and while Petitioners may not have availed themselves to the fullest extent thereof, this Court should not now attempt to rectify Petitioners obvious dereliction.

Accordingly, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief in Opposition upon the Honorable Jesse W. Shotts and the Honorable Clifford Walker Norris, Attorneys of Record for Petitioners in this cause by placing the same in the United States mail, first class postage prepaid addressed to them at 2517 North 25th Avenue, Birmingham, Al. 35207, this 28 day of October, 1986.

Norman K. Brown

NORMAN K. BROWN